Supreme Court of the United States

October Term, 1975

No. 75-1360

DAN FRANCIS,
Appellant,

vs.

CHRYSLER CORPORATION, KENNETH KROUSE,
Administrator Bureau of Workmen's Compensation,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF OHIO

JURISDICTIONAL STATEMENT

BENJAMIN B. SHEERER
RUDD, KARL, SHEERER, LYBARGER AND
CAMPBELL, Co., L.P.A.
33 Public Square
Suite 210
Cleveland, Ohio 44113
Attorney for Appellant

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

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OPINIONS BELOW

The opinion of the Supreme Court of Ohio is reported at 44 Ohio St. 2d 229 and is included in the appendix. The opinions of the Court of Appeals and Court of Common Pleas of Summit County, Ohio are not reported but are included in the appendix.

GROUNDS ON WHICH THIS COURT'S JURISDICTION IS INVOKED

This is a workmen's compensation case on appeal from decisions of The Ohio Bureau of Workmen's Compensation and Industrial Commission, Chapter 4123, Ohio Revised Code. These decisions were given *de novo* review by Ohio Courts pursuant to Section 4123.519, Ohio Revised Code.

The Ohio Supreme Court issued its judgment on December 31, 1975. A notice of appeal was filed in the Ohio Supreme Court on February 5, 1976.

This Court has jurisdiction of this appeal by virtue of 28 U.S.C. 1257 (2). *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164 (1972).

STATUTORY PROVISION INVOLVED

This appeal asserts the invalidity of a portion of Section 4123.84, Ohio Revised Code. The section is set out in the appendix at 32.

QUESTION PRESENTED

Whether Section 4123.84, Ohio Revised Code, abridges appellant's rights guaranteed under the Equal Protection Clause of the Fourteenth Amendment by arbitrarily classifying certain injured employees of self-insured employers who have received medical treatment by a licensed physician employed by the self-insured employer so as to deprive them of workmen's compensation benefits.

STATEMENT OF THE CASE

By action of its people[1] and its legislature[2] Ohio has created a system to provide "compensation to workmen and their dependents for death, injuries, or occupational disease, occasioned in the course of such workmen's employment". This statutory remedy is exclusive. No other remedy is available "in damages at common law or by statute" for industrial injuries. Article II, Section 35, Ohio Constitution; Section 4123.74, Ohio Revised Code.

Ohio's system of workmen's compensation is a state monopoly fund to which employers must pay premiums.[3] Section 4123.35, Ohio Revised Code. Certain employers are exempted, however, from the requirement to pay premiums and are allowed to function as self-insurers.[4] Section 4123.35, Ohio Revised Code; *State, ex rel. Turner v. United States Fidelity & Guaranty Co.* (1917), 96 Ohio St. 250, 256, 117 N.E. 232, 234; *Thornton v. Duffy* (1918), 99 Ohio St. 120, 214 N.E. 54.

An employer may qualify as a self-insurer by demonstrating to the Industrial Commission of Ohio that it will "abide by the rules of the Commission" and that it is of "sufficient financial ability to render certain payment of compensation to injured employees or dependents of killed employees, and the furnishing of medical, surgical, nursing, and hospital attention and services and medicines, and funeral expenses, equal to or greater than is provided"

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1. Article II, Section 35, Ohio Constitution.
2. Chapters 4121 and 4123, Ohio Revised Code (ORC).
3. It has recently been estimated that the Ohio Workmen's Compensation law covers 4,750,000 employees. (1974 Annual Report, Industrial Commission of Ohio.)
4. It is estimated that 50-55% of Ohio's workers are employed by self-insured employers. (Robert Daugherty, Assistant to Administrator, Bureau of Workmen's Compensation in telephone conversation on February 19, 1976.)

under the provisions of the workmen's compensation law. Section 4123.35, Ohio Revised Code.

Ohio's workers, therefore, fall into two broad, general groups: those who work for employers who pay premiums directly to the state fund and those who work for employers who elect and are permitted to be self-insurers. The appellant, Dan Francis, is the employee of a self-insuring employer, Chrysler Corporation, at its automobile stamping plant in Twinsburg, Ohio.

On or about June 22, 1970 Mr. Francis was working on his job helping other employees with a conveyor. The conveyor dropped on a fellow employee's hand and Mr. Francis went to his aid. He lifted the conveyor off the other employee's hand. In doing this Mr. Francis injured his left arm.

On June 26, 1970 he went to the plant dispensary where he was seen by a company nurse. He told her how he had hurt his arm. She instructed him to return later to see the plant physician.

When he returned, he saw Enhew Sycz, M.D., a physician licensed to practice medicine in Ohio. Dr. Sycz is employed full-time by Chrysler Corporation as its plant physician at its Twinsburg Stamping Plant.

Dr. Sycz's diagnosis was epicondylytis of the left elbow.[5] He prescribed Tandearil,[6] one tablet four times a day; an Ace bandage; and aspirin as needed.

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5. Defined as "inflammation of the epicondyle or the tissues adjoining the epicondyle of the humerus". DORLAND'S MEDICAL DICTIONARY, W. B. Saunders (25th ed. 1974).

6. Tandearil is described by the PHYSICIAN'S DESK REFERENCE TO PHARMACEUTICAL SPECIALTIES & BIOLOGICALS (2d ed. 1973) as "A potent anti-inflammatory agent" and cautions that:

> (It) cannot be considered a simple analgesic and should never be administered casually. Each patient should be carefully evaluated before treatment is started and should remain constantly under the close supervision of the physician. *Id.* at 61.

On October 18, 1972, seeking further benefits, Mr. Francis applied in writing for compensation for his injury to Ohio's Bureau of Workmen's Compensation.[7] Chrysler Corporation filed an answer contesting the compensability of the claim. Following a hearing a deputy administrator of the Bureau of Workmen's Compensation entered an order on May 17, 1973, which disallowed the claim on the merits on the ground that Mr. Francis' disability was not the result of an injury sustained in the course of and arising out of his employment.[8]

Dan Francis appealed this order of the deputy administrator and the matter was assigned for hearing to the Canton Regional Board of Review of the Industrial Commission of Ohio. On September 17, 1973, that Board found that it had no jurisdiction to consider the appeal because the application for compensation had not been filed within two years of the date of injury as required by Section 4123.84, Ohio Revised Code.

An appeal was then taken by Mr. Francis from the order of the Canton Regional Board of Review to the Industrial Commission of Ohio. In an order dated April 11, 1974, the Industrial Commission exercised its discretion pursuant to Section 4123.516, Ohio Revised Code and refused to entertain the appeal.

Mr. Francis then appealed to the Court of Common Pleas of Summit County, Ohio. (Section 4123.519, Ohio Revised Code provides for a *de novo* appeal in such cases.)

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7. Ohio law provides for "continuing jurisdiction" in workmen's compensation cases. Section 4123.52, Ohio Revised Code. It may occur that a claim remains "open" and that benefits are provided for a claimant's lifetime.

8. Section 4123.01(c) defines injury for compensation purposes as "any injury, whether caused by external accidental means or accidental in character and result, received in the course of, and arising out of, the injured employee's employment."

The issues were joined and decided on cross motions for summary judgment. In his motion Mr. Francis asserted that unless Section 4123.84 was construed to cover his case, he would be denied equal protection of the law. On September 17, 1974, the Court of Common Pleas issued a "Finding and Judgment Order" which held that Mr. Francis' claim was barred by the statute of limitations and that the statute was not tolled by the treatment he received from Dr. Sycz at the plant dispensary (App. 26).

Mr. Francis appealed the ruling of the Court of Common Pleas to the Court of Appeals of Summit County, Ohio. He again asserted that the statute should be construed to cover his case and that if it was not, that he would be denied equal protection of the law. On April 9, 1975 the Court of Appeals denied his appeal and specifically rejected his equal protection claim (App. 18). His application for reconsideration was also denied on April 18, 1975.

Mr. Francis thereafter appealed his case to the Ohio Supreme Court where he repeated his statutory and equal protection claims. On December 31, 1975 the Ohio Supreme Court denied his appeal and adopted the reasoning of the Court of Appeals on the equal protection argument (App. 14). Mr. Francis then filed his appeal to this Court.

The effect of the decisions below is to prevent an adjudication on the merits. Dan Francis has not been given the opportunity to try to persuade the trier of facts that he has sustained a compensable injury under Ohio law. This comes about in the following way.

Section 4123.84, Ohio Revised Code generally requires that a workmen's compensation claim be filed in writing with the state within two years of the date of the occurrence. This requirement does not apply, however, in the case of an employee of a self-insuring employer if:

> Compensation or benefits have been paid or furnished equal to or greater than is provided for in Sections 4123.52, 4123.55 to 4123.62, inclusive and 4123.64 to 4123.67, inclusive, of the Revised Code.

This exception to the general limitations period for self-insured employees results from the peculiar nature of self-insurance in Ohio's system. A self-insuring employer acts as his own administrator of the workmen's compensation law and adjusts all matters directly with the injured employee. The state agency is involved only where there is a dispute between the employee and the employer over what benefits may be required.[9] It is estimated that 90% of all claims made to self-insured employers are not contested. *Workmen's Compensation Conference on Representing Employers*, Section 405 (Ohio Legal Center Institute, 1968). Thus in the vast majority of cases involving self-insured employees, the state agency is not involved. As a result employees of self-insured employers are accustomed to having their workmen's compensation problems adjusted directly and informally with their employer without the intervention of the state.

Since the advent of Ohio's compulsory workmen's compensation system in 1919, the special relationship between self-insured employer and employee has been reflected in the claims provision of the law. At first the law required only an oral application to the self-insured employer. 108 Part I, Ohio Laws 313, 319 (1919). In 1941 when the Ohio legislature required for the first time

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9. Rule IC/WC 21-13, Adjustment of Disputed Self-Insuring Claims, Rules Governing Claims Procedures Before The Bureau of Workmen's Compensation, All Boards of Review and the Industrial Commission of Ohio (Oct. 14, 1968).

a *written* application within two years to the *state agency*, it saw the need to toll the statute for self-insured employees who had received compensation from their employer and hence would not realize the need to take further steps to establish their claim. This provision showed a deference to the tradition of oral application that had developed between the employees and the self-insurer in the context of informal, direct adjudication of claims. *W. S. Tyler v. Rebic* (1928), 118 Ohio St. 522, 161 N.E. 790; *State, ex rel. Bettman v. The James R. Clow & Sons Co.* (1930), 36 Ohio App. 156, 173 N.E. 14 (Tuscarawas Co.). The legislature obviously wanted to protect the claimant who might conclude that the employer had recognized his claim and therefore would see no need to file it in writing with the state.

In 1963 the Ohio legislature amended the limitations period to its present form. The employer's provision of compensation or "benefits" within two years of the injury continued to toll the limitation, but, "benefits" was defined narrowly as follows:

> (B) As used in Division (A) (2) (b) of the Section "benefits" means payment by a self-insured employer to, or on behalf of, an employee for: [sic]
>
> (1) a hospital bill;
>
> (2) a medical bill to a licensed physician or hospital;
>
> (3) an orthopedic or prosthetic device.

Although urged to do so in this case, the Ohio Supreme Court has declined to construe sub-paragraph (B) (2) above to reach the situation in which (as here) the employee is treated solely by a salaried plant physician in the medical facilities located on the employer's premises.

The effect of the statute as interpreted and applied in the *instant* case is to create an arbitrary classification of self-insured employees in Ohio. Those employees who receive medical care solely from physicians salaried by self-insuring employers will not have the benefit of the tolling provision in the statute. On the other hand, those employees who receive treatment furnished by the employer for which a direct fee for service rendered is paid will have the benefit of the tolling provision.

SUBSTANTIALITY OF FEDERAL CONSTITUTIONAL QUESTIONS

The incidence of work related injuries in our highly industrialized society is disturbingly high. In the year 1973 alone, occupational injuries and illnesses occurred at the rate of 11.0 for each 100 full-time workers. *Bureau of Labor Statistics, U.S. Dept. of Labor, Occupational Injuries and Illnesses in the United States, By Industry, 1973*, p. 1 (Bulletin No. 1874, 1975).[10] Among those employees, like appellant, who are engaged in the manufacture of transportation equipment, occupational injuries and illnesses occurred at the rate of 16.7 for each 100 full-time workers. *Id.* at 17.

The irony and the unfairness of the interpretation sanctioned by the Ohio Supreme Court in the instant case is that the very employee who stands most in need of the tolling provision is the person who is denied it. If an employee is injured and reports to the plant dispensary and is treated by a physician salaried by the employer, he is in no way alerted to the fact that the employer may dis-

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10. Other studies suggest the injury and illness rates are substantially higher. JOSEPH A. PAGE AND MARY WIN-O'BRIEN, BITTER WAGES 161-165, 204-205 (1973).

pute the compensability of the claim. As previously discussed, the vast majority of claims are handled by the self-insured employer and there is no need to file a claim in writing with the state.[11] If, on the other hand, the employee is treated by a physician outside the plant and the self-insuring employer decides not to pay the fee of the outside physician, then the employee will be put on notice that there is a dispute between himself and his employer concerning the compensability of his claim. Having been thus alerted, the employee can take the steps necessary to file his claim timely and have it adjudicated by the state agency.

These employees should be treated alike. There is no reason for treating them differently. These employees are in a situation where one has the benefit of the statute and the other does not depending simply on the fortuitous element of how the attending physician is paid for services. Suppose, for instance, that both Dan Francis and another employee had acted to assist their fellow employee and in doing so both had hurt their arms. Dan Francis is treated by the salaried plant physician, but the other employee secured treatment from his own doctor and the employer pays the bill. The claim of the latter employee would be tolled while Dan Francis' claim would not be. No adequate justification for this artificial rule exists.

Appellant does not dispute the legislature's power to create imprecise statutory classifications. *McGowan v. Maryland*, 366 U.S. 420 (1961). However, as this Court has stated:

> (T)he classification must be reasonable, not arbitrary, and must rest upon some ground of difference having

11. Furthermore, there is no requirement that the employer even report the fact of the injury to the state unless it results in at least eight days disability. Section 4123.28, Ohio Revised Code.

> a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412-415 (1920).

Alternately, this Court has stated that the legistive classification must have a rational basis in furthering a legitimate, articulated state purpose. *McGinnis v. Royster*, 410 U.S. 263 (1973).

The classification effected by the present interpretation of Section 4123.84, Ohio Revised Code is not rationally related to any legitimate state purpose. The current rule leads to absurd results which are directly *contrary* to the purpose of the Ohio Workmen's Compensation legislation and the specific provision involved in this appeal.[12]

The people of Ohio have considered the problem of industrial injuries to be of such magnitude that they have provided for a workmen's compensation system in their constitution. Article II, Section 35, Ohio Constitution. At the same time common law rights of actions were abrogated, establishing the exclusivity of the workmen's compensation remedy.

We do not deal here with a non-contractual, social welfare benefit. Workmen's compensation benefits are provided to compensate productive, useful workers for loss sustained while in their employment and at a time when they are sustaining this loss.

The practical effect of the holding by the Ohio Supreme Court is to lead many persons to believe that their

12. That purpose is, of course, to compensate injured workers and their families. To effectuate that purpose the Ohio Legislature has mandated a liberal construction of the act "in favor of employees and the dependents of deceased employees." Section 4123.95, Ohio Revised Code.

employer has recognized and accepted their injury as compensable only to find out after two years have passed that the employers will assert the artificial bar of the statute of limitation to preclude further benefits. This case should be set down for plenary consideration to determine whether the guarantee of equal protection permits a state to create an exclusive system for the compensation of industrial injuries and at the same time, by granting the special status of self-insurance, foster a situation where many persons are fenced out from the benefits of the legislation.

Respectfully submitted,

BENJAMIN B. SHEERER
Attorney for Appellant

Of Counsel:
RUDD, KARL, SHEERER, LYBARGER &
CAMPBELL, CO., L.P.A.
33 Public Square, Suite 210
Cleveland, Ohio 44113
241-3646

APPENDIX

ORDER OF THE SUPREME COURT OF OHIO

(Dated December 31, 1975)

No. 75-527

THE SUPREME COURT OF THE STATE OF OHIO
THE STATE OF OHIO,
CITY OF COLUMBUS.

DAN FRANCIS,
Appellant,

vs.

CHRYSLER CORPORATION *et al.*,
Appellees.

CERTIFIED BY THE COURT OF APPEALS
FOR SUMMIT COUNTY

This cause, here on certification from the Court of Appeals for Summit County, was heard in the manner prescribed by law. On consideration thereof, the judgment of the Court of Appeals is affirmed; for the reasons set forth in the opinion rendered herein and it appearing that there were reasonable grounds for this appeal, it is ordered that no penalty be assessed herein.

It is further ordered that the appellee recover from the appellant its costs herein expended; that a mandate be sent to the COURT OF APPEALS to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for Summit County for entry.

OPINION OF THE SUPREME COURT OF OHIO

(Decided December 31, 1975)

No. 75-527

THE SUPREME COURT OF THE STATE OF OHIO
THE STATE OF OHIO
CITY OF COLUMBUS

DAN FRANCIS,
Appellant,

vs.

CHRYSLER CORPORATION *et al.*,
Appellees.

CERTIFIED by the Court of Appeals for Summit County.

On June 22, 1970, appellant, Dan Francis, allegedly injured his left arm and shoulder while in the course of his employment at Chrysler Corporation, Twinsburg Plant. The plant physician, a salaried employee of Chrysler Corporation, saw appellant at the plant dispensary four days later, diagnosed appellant as suffering from epicondylitis (tennis elbow), and prescribed treatment. On September 16, 1970, appellant again visited the dispensary and reported recurrence of the symptoms, and was treated by the nurse on duty. Thereafter, appellant never sought or received any further medical attention for his elbow.

On October 18, 1972, appellant made written application for workmen's compensation as a result of the June 1970 incident. The claim was disallowed by the Administrator of the Bureau of Workmen's Compensation on the ground that the injury was not sustained in the course of

appellant's employment. Upon appeal to the Canton Regional Board of Review, the board ruled that it had no jurisdiction to consider the appeal because the application was not filed within two years of the date of the injury as required by R. C. 4123.84. The Industrial Commission refused further appeal.

Appellant then appealed to the Court of Common Pleas of Summit County. Both parties filed motions for summary judgment. On September 17, 1974, the court held appellant's claim to be barred by the statute of limitations and rendered final judgment for appellees.

That judgment was affirmed by the Court of Appeals for Summit County, and that court, finding its judgment to be in conflict with the judgment of the Court of Appeals for Montgomery County in the case of *Harrison v. Sommer* (unreported, February 27, 1973), No. 3982, certified the record of this case to this court for review and final determination.

RUDD, KARL, SHEERER, LYBARGER & CAMPBELL, Co., L. P. A., and MR. BENJAMIN B. SHEERER, *for appellant.*

MESSRS. BUCKINGHAM, DOOLITTLE & BURROUGHS and MR. WALTER E. DEBRUIN, *for appellee Chrysler Corporation.*

MR. WILLIAM J. BROWN, *attorney general, for appellee Administrator, Bureau of Workmen's Compensation.*

Per Curiam. Appellant's primary contention is that the ordinary and plain meaning of R. C. 4123.84,* its legisla-

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*As pertinent here, R. C. 4123.84 provides:

"(A) In all cases of injury or death, claims for compensation or benefits for the specific part or parts of the body injured shall be forever barred unless, within two years after the injury or death:

"(1) Written notice of the specific part or parts of the body claimed to have been injured has been made to the Industrial Commission or the Bureau of Workmen's Compensation;

(Continued on following page)

tive history, the special characteristics of self-insurance, and the liberal construction to be given to the Workmen's Compensation Act, include as a "benefit" the furnishing of medical services to an employee by a salaried plant physician, thereby causing such treatment to invoke the tolling aspect of R. C. 4123.84 (A) (2) (b).

However, as was stated by the Court of Appeals in its opinion:

"Therefore, in light of the statutory history and purpose, we find that there is a meaningful difference between an employer paying a doctor bill and an employer paying a salary to a doctor. This difference lies in the fact that when an employer pays a doctor bill for a specific injury, he is on notice of a possible workmen's compensation claim. Whereas, the payment of a salary to a physician does not supply any notice to the employer of any specific accident or injury. Were we to adopt the interpretation urged by the plaintiff we would, in effect, be vitiating the 1963 amendments by the legislature to R. C. 4123.84 and restoring it to the 1959 definition of benefits. Such is the result,

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Footnote continued—

"(2) In the event the employer has elected to pay compensation or benefits directly, one of the following has occurred:

"(a) Written notice of the specific part or parts of the body claimed to have been injured has been given to the commission or bureau;

"(b) Compensation or benefits have been paid or furnished equal to or greater than is provided for in Sections 4123.52, 4123.55 to 4123.62, inclusive, and 4123.64 to 4123.67, inclusive, of the Revised Code.

"(3) Written notice of death has been given to the commission or bureau.

"(B) As used in division (A) (2) (b) of this Section 'benefits' means payment by a self-insured employer to, or on behalf of, an employee for:

"(1) A hospital bill;

"(2) A medical bill to a licensed physician or hospital;

"(3) An orthopedic or prosthetic device."

in effect, reached by the court in the unreported case of *Harrison v. Sommer* [*supra*] * * *."

Appellant contends further, in the alternative, that an interpretation of R. C. 4123.84 which does not include treatment by a company salaried physician as "benefits" would deny appellant equal protection of the laws, in violation of the state and federal Constitutions.

The Court of Appeals' reply to that contention is well-stated:

"However, we fail to see how R. C. 4123.84(B) (2) invidiously discriminates against the worker in the factory of a self-insurer. He can toll the statute by filing a written claim with the Industrial Commission, whether employed by a self-insurer, or a regular contributor to the fund. As an employee of a self-insurer, the plaintiff (appellant) has the same options as his fellow employees of filing a written notice or submitting a bill of a licensed physician for payment. If he elects to receive treatment in some form other than by a hospital, or a licensed physician, he can still file a written notice. The classifications urged by plaintiff are really artificial sub-classes. In reality, it actually takes less for an employee of a self-insurer to toll the statute, than it does for an employee of a non self-insurer. We do not feel that the reasoning of *Fleischman v. Flowers*, 25 Ohio St. 2d 131 (1971), *Emmons v. Keller*, 21 Ohio St. 2d 48 (1969), or *Kinney v. Kaiser Aluminum & Chemical Corp.*, 41 Ohio St. 2d 120 (1975) are applicable to this case. * * *"

Based on the foregoing, the judgment of the Court of Appeals is affirmed.

Judgment affirmed.

O'NEILL, *C. J.*, HERBERT, CORRIGAN, STERN, CELEBREZZE and W. BROWN, *JJ.*, concur.

P. BROWN, *J.*, concurs in the judgment.

DECISION AND JOURNAL ENTRY OF THE COURT OF APPEALS OF SUMMIT COUNTY, OHIO

(Dated April 9, 1975)

C. A. No. 7620

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO
SUMMIT COUNTY, ss:

DAN FRANCIS,
Plaintiff-Appellant,

v.

CHRYSLER CORPORATION, *et al.*,
Defendants-Appellees.

APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS OF SUMMIT COUNTY, OHIO
CASE NO. 74 5 1137

DECISION AND JOURNAL ENTRY

This cause came on to be heard the 7th day of February, 1975, upon the record in the trial court, and the briefs. It was argued by counsel for the parties and submitted to the court. Each assignment of error was reviewed by the court and, upon review, the following disposition made:

MAHONEY, J.

While at work, on June 22, 1970, plaintiff-appellant, Dan Francis, attempted to lift a conveyor which had fallen on the hand of a fellow employee. In doing so, he apparently injured his left arm and shoulder. Four days later, he went to the company dispensary and complained of these symptoms. He was treated by a doctor, who was a salaried employee of the employer corporation (defendant-appellee Chrysler Corporation). The doctor diagnosed the injury to be external epicondylitis and prescribed a treatment consisting of the application of an ace bandage, a prescription for Tandearil and aspirin, as needed. Plaintiff again visited the dispensary on September 16, 1970, reporting the recurrence of the symptoms and the same treatment was prescribed by the doctor.

On October 18, 1972, plaintiff filed a formal written claim for Workmen's Compensation with the Ohio Industrial Commission as a result of the June, 1970, injury. This claim was disallowed by the Administrator on the ground that the injury was not sustained in the course of plaintiff's employment. An appeal of this finding was made to the Canton Regional Board of Review. The Board ruled that it had no jurisdiction to consider the claim since the application was not filed within two years as required by R. C. 4123.84. The Industrial Commission refused to hear a subsequent appeal by plaintiff.

Thereafter, plaintiff filed an appeal with the Court of Common Pleas which found in favor of the defendant on cross-motions for summary judgment. From this judgment plaintiff appeals.

Plaintiff says the trial court erred:

"I. In holding that the employment of a licensed physician on a full time basis does not constitute, within the meaning of Revised Code Section 4123.84(A)(2)(b) and Section 4123.84(B)(2), a payment by the self-insured employer, Chrysler Corporation, Appellee, on behalf of its

employee, Dan Francis, Appellant, for a medical bill to a licensed physician when the physician has provided to the employee medical services of examination, diagnosis, and prescription of medicines and other treatment,

"II. In failing to hold that Revised Code Section 4123.84(B)(2) when interpreted as not to include compensation to a licensed physician by salary instead of on a fee-for-service basis violates the Ohio Constitution, Article II, Section 26, and the Fourteenth Amendment, Clause I, of the United States Constitution,

"III. In holding that the plaintiff-appellant's Workmen's Compensation claim was not timely filed, because barred by the statute of limitations contained in Revised Code Section 4123.84, and in rendering judgment for the appellees, Chrysler Corporation and Anthony Stringer, Administrator of the Ohio Bureau of Workmen's Compensation."

The first assignment of error is without merit, R.C. 4123.84 provides:

"Claims barred after two years; exceptions,

"(A) In all cases of injury or death, claims for compensation or benefits for the specific part or parts of the body injured shall be forever barred unless, within two years after the injury or death:

"(1) Written notice of the specific part or parts of the body claimed to have been injured has been made to the industrial commission or the bureau of workmen's compensation;

"(2) In the event the employer has elected to pay compensation or benefits directly, one of the following has occurred:

"(a) Written notice of the specific part or parts of the body claimed to have been injured has been given to the commission or bureau;

"(b) Compensation or benefits have been paid or furnished equal to or greater than is provided for in sections 4123.52, 4123.55 to 4123.62, inclusive, and 4123.64 to 4123.67, inclusive, of the Revised Code;

"(3) Written notice of death has been given to the commission or bureau.

"(B) As used in division (A)(2)(b) of this section, 'benefits' means payment by a self-insured employer to, or on behalf of, an employee for:

"(1) A hospital bill;

"(2) A medical bill to a licensed physician or hospital;

"(3) An orthopedic or prosthetic device.

* * * * *."

R.C. 4123.84 was enacted to place a limitation on the time in which a claim for a work related injury may be filed and to provide for exceptions which would toll the two year statute. These exceptions all have one thing in common; they all provide some sort of notice of claim to the entity which will ultimately provide the compensation and benefits. There is sound reasoning behind the inclusion of these exceptions in R.C. 4123.84, when they are considered in light of the purposes behind the statute. The first is to facilitate prompt medical attention

for the injury; the second is to provide the employer, or commission, with an opportunity for immediate investigation of the circumstances of the accident. 3 A. Larson, *Workmen's Compensation Law* §78.30 (1973). Both of these purposes reflect the need for timely notice, which is provided by the exceptions set forth in R.C. 4123.84.

In determining the meaning of the term "medical bill" as used in R.C. 4123.84(B)(2), the lower court relies heavily on J. Young, *Ohio Workmen's Compensation Law* §13.15 (2 ed. 1971). Mr. Young reviews the history of R.C. 4123.84 and points out how the 1963 amendment to R.C. 4123.84 (which included the language contained in R.C. 4123.84(B)(2)) was promulgated to limit the methods by which an employee could put his employer, who was a self-insurer, on notice as to any injury sustained by him in the scope of his employment.

Therefore, in light of the statutory history and purpose, we find that there is a meaningful difference between an employer paying a doctor bill and an employer paying a salary to a doctor. This difference lies in the fact that when an employer pays a doctor bill for a specific injury, he is on notice of a possible Workmen's Compensation claim. Whereas, the payment of a salary to a physician does not supply any notice to the employer of any specific accident or injury. Were we to adopt the interpretation urged by the plaintiff we would, in effect, be vitiating the 1963 amendments by the legislature to R.C. 4123.84 and restoring it to the 1959 definition of benefits. Such is the result, in effect, reached by the court in the unreported case of *Harrison v. Sommer, Admr.*, #3982, Montgomery County, Second District Court of Appeals (1973).

Plaintiff next argues that the second assignment of error is the obverse of the first assigned error by the trial

court in that by interpreting R.C. 4123.84(B)(2) as not to include a salary paid to a licensed physician as benefits, the statute then denies plaintiff equal protection of the laws under the fourteenth amendment of the federal constitution and Art. II, Section 26 of our state constitution.

We disagree. We are mindful, of course, that Workmen's Compensation is a constitutional creation (Art. II, Section 35, Ohio Constitution) to provide "compensation for workmen and their dependents, for death, injuries or occupational disease occasioned in the course of such workmen's employment, * * *." To that end, R.C. 4123.84 provides that the statutory provisions should be liberally construed in favor of employees. Likewise, Art. II, Section 35 took away the employee's common law actions against his employer.

However, we fail to see how R.C. 4123.84(B)(2) invidiously discriminates against the worker in the factory of a self-insurer. He can toll the statute by filing a written claim with the Industrial Commission, whether employed by a self-insurer or a regular contributor to the fund. As an employee of a self-insurer, the plaintiff (appellant) has the same options as his fellow employees of filing a written notice or submitting a bill of a licensed physician for payment. If he elects to receive treatment in some form other than by a hospital, or a licensed physician, he can still file a written notice. The classifications urged by plaintiff are really artificial sub-classes. In reality, it actually takes less for an employee of a self-insurer to toll the statute, than it does for an employee of a non self-insurer. We do not feel that the reasoning of *Fleischman v. Flowers,* 25 Ohio St. 2d 131 (1971), *Emmons v. Keller,* 21 Ohio St. 2d 48 (1969), or *Kinney v. Kaiser Aluminum & Chemical Corp.*, 41 Ohio St. 2d 120

(1975) are applicable to this case. The giving of notice to the self-insurer was reasonable grounds for the legislative classifications of specified, but limited, benefits necessary to toll the statute. We cannot, therefore, inquire into the wisdom of such legislation.

The plaintiff's third assignment of error is a summation of the first two errors and, as such, the reasoning we have applied under them shall likewise apply to the third, which we also overruled.

The judgment of the trial court is affirmed.

The court finds that there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court, directing the Court of Common Pleas to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to Rule 27 of the Rules of Appellate Procedure.

Ten (10) days from the date hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals, at which time the period for review shall begin to run. Appellate Rule 22(E).

Exceptions.

/s/ WILLIAM H. VICTOR
Presiding Judge for the Court

VICTOR, *P.J.* and
HARVEY, *J.* concur.

(HARVEY, *J.*, retired Judge of the Court of Common Pleas of Summit County, Ohio, sitting by assignment under authority of Section 6 (C), Article IV, Constitution of Ohio).

JOURNAL ENTRY OF THE COURT OF APPEALS OF SUMMIT COUNTY, OHIO

(Filed April 18, 1975)

C. A. No. 7620

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO
SUMMIT COUNTY, SS:

DAN FRANCIS,
Plaintiff-Appellant,

v.

CHRYSLER CORPORATION, *et al.*,
Defendants-Appellees.

JOURNAL ENTRY

After due consideration, it is ORDERED that appellant's motion for reconsideration of the Decision and Journal Entry filed in this cause on April 9, 1975, be, and it hereby is DENIED.

/s/ WILLIAM H. VICTOR
Presiding Judge

/s/ EDWARD J. MAHONEY
Judge

FINDING AND JUDGMENT ORDER OF THE COURT OF COMMON PLEAS

(Filed September 17, 1974)

Case No. 74-5-1137

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

DAN FRANCIS,
Plaintiff-Appellant,

vs.

CHRYSLER CORPORATION

and

ANTHONY STRINGER, Administrator, Bureau of Workmen's Compensation,
Defendants-Appellees.

FINDING & JUDGMENT ORDER

QUILLIN, J.

This matter came on to be heard on cross-motions for summary judgment.

It is undisputed that the Plaintiff first made a written application for compensation in October of 1972, more than two years after his injury in June of 1970. It is agreed that the Plaintiff's claim is barred by the statute of limitations unless the facts fall within the exception contained in Section 4123.84 (A) (2) (b) which provides in pertinent part:

"In all cases of injury or death, claims for compensation or benefits for the specific part or parts of the body injured shall be forever barred unless within two years after injury or death . . . (b) compensation or benefits have been paid or furnished . . ."
Section 4123.85 (b) provides:

"As used in division (A) (2) (b) of this section 'benefits' means payments by a self insured employer to, or on behalf of, an employee for:

"(1) A hospital bill;

"(2) A medical bill to a licensed physician or hospital;

"(3) An orthopedic or prosthetic device."

It is stipulated that on June 26, 1970 Dr. Sycz, a licensed physician, saw the Plaintiff at the Defendant's dispensary. At that time Dr. Sycz, who was employed full time by the Defendant, diagnosed the Plaintiff as suffering from epicondylitis and prescribed: (1) an ace bandage, (2) Tandearil, 1 tablet 4 times a day, and (3) aspirin as needed.

In construing the statute, its legislative history is helpful. James L. Young, a highly respected scholar with a particular interest in Workmen's Compensation, writes in his treatise *Ohio Workmen's Compensation Law,* 2d Ed:

"Section 13.15 Limitations for filing of claims

"Prior to the 1959 amendments to the law, the self-insuring employe was required to file his claim for injury benefits within two years of the date of the injury by filing written notice wtih the Commission or his claim was barred. An exception existed where the employer had recognized the claim, no form or

application to the employer specified, by the payment of compensation under Sections 4123.56, temporary total, 4123.57, temporary partial, percentage of permanent partial and loss of member, or 4123.58, permanent total, R.C. Compensation was considered to be the regular weekly payment and did not include medical expenses at that time.

"The 1959 amendments added definitions of compensation and benefits to Section 4123.01, R.C., which included the furnishing of medical services within the meaning of benefits and included benefits within the definition of compensation. The statute of limitations relating to injuries, Section 4123.85, R.C., was also amended to provide that the payment or furnishing of compensation or benefits tolled the statute. Most self-insuring employers maintained medical facilities which were available to their employes irrespective of whether or not the need for the service was industrial in origin. The employers were understandably concerned over the possibility that every instance of furnishing medical service would be held to be the recognition of an industrial claim at some later date. Obviously, the employe who reported to the dispensary for service and said that he received the injury at home would not be entitled to a later finding that the employer allowed a workmen's compensation claim by the furnishing of medcial service. It is, also, obvious that an employe who reported to the dispensary stating that he sustained his injury on the job would be entitled to a later finding that the employer allowed his claim by rendering a series of medical treatments for the condition. In between the extremes were numerous twilight factual situations. The self-insuring employer has a dual role. He is not only the employer, in the sense

of the State Fund employer, but also the administrator of the compensation program in the absence of a dispute. When he renders the medical service to his employe, he is wearing both hats. He cannot take the position that he is merely the employer in such a situation and lay aside his responsibilities as the arbiter of the employe's rights. The privilege of self-insurance requires the assumption of the burdens which accompany it. The Bureau's position in resolving issues presented in such cases was to ascertain from all the facts whether or not the employe placed the employer upon notice that the medical attention was rendered for a cause that was industrial in origin and whether or not the employer acted in a course consistent with the recognition of the claim.

"The 1963 amendments to the compensation law removed the 1959 definitions of compensation and benefits from Section 4123.01, R.C., and revised Section 4123.84, R.C., to require written notice of injury to be given to the Bureau or Commission or that the self-insurer pay or furnish benefits as provided in Sections 4123.52, continuing jurisdiction, 4123.55, total disability, 4123.56, temporary total, 4123.57, temporary partial, percentage of permanent partial and loss of member, 4123.58, permanent total, 4123.59, death, 4123.60, death, 4123.61, average weekly wage, 4123.62, average weekly wage, 4123.64, lump sum advancement, 4123.65, lump sum settlement, 4123.65.1, free choice of physician and 4123.66, medical, R.C., to toll the statute of limitations. For the purposes of those provisions, benefits is defined in the 1963 amendment to mean payment by the self-insurer of a hospital bill, a medical bill to a licensed physician or hospital, or for an orthopedic or prosthetic device. The amendment which became effective on

October 1, 1963, 130 Ohio Laws 939, is more restrictive than the procedure provided in the 1959 amendment unless the employer fails to apply the process of adjudication prior to the payment of one of the enumerated bills."

Since it is undisputed that the Defendant did not make a payment to the Plaintiff or on his behalf for a hospital bill, a doctor bill or an orthopedic or prosthetic device within two years of his injury, it follows that the Plaintiff's claim was not timely filed.

There is no genuine issue as to any material fact and it appears that the Defendant is entitled to judgment as a matter of law.

Therefore it is ordered that final judgment be rendered in favor of the Defendant and the case be dismissed at Plaintiff's costs.

/s/ DAVID B. QUILLIN
Judge

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

(Filed February 5, 1976)

Case Number 75-527

IN THE SUPREME COURT OF OHIO

DAN FRANCIS,
Plaintiff-Appellant,

v.

CHRYSLER CORPORATION, *et al.*,
Defendants-Appellees.

NOTICE OF APPEAL

Notice is hereby given that Dan Francis, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Ohio, affirming the judgment of the Court of Appeals for Summit County, Ohio, entered in this action on December 31, 1975.

This appeal is taken pursuant to 28 USC Section 1257 (2).

/s/ BENJAMIN B. SHEERER
Attorney for Appellant

Of Counsel:

RUDD, KARL, SHEERER, LYBARGER & CAMPBELL CO., L.P.A.
33 Public Square, Suite 210
Cleveland, Ohio 44113
(216) 241-3646

SERVICE

A copy of this Notice of Appeal has been mailed postage paid this 4 day of February, 1976 to Walter E. deBruin, Buckingham, Doolittle & Burroughs, 1500 Akron Center Building, 1 Cascade Plaza, Akron, Ohio 44308, attorney for appellee Chrysler Corporation, and to William J. Brown, Attorney General of Ohio, 30 East Broad Street, Columbus, Ohio 43215, attorney for appellee Administrator of the Bureau of Workmen's Compensation.

/s/ BENJAMIN B. SHEERER
Attorney for Appellant

OHIO REVISED CODE

4123.84 Claims barred after two years; exceptions.

(A) In all cases of injury or death, claims for compensation or benefits for the specific part or parts of the body injured shall be forever barred unless, within two years after the injury or death:

(1) Written notice of the specific part or parts of the body claimed to have been injured has been made to the industrial commission or the bureau of workmen's compensation;

(2) In the event the employer has elected to pay compensation or benefits directly, one of the following has occurred:

(a) Written notice of the specific part or parts of the body claimed to have been injured has been given to the commission or bureau;

(b) Compensation or benefits have been paid or furnished equal to or greater than is provided for in sections 4123.52, 4123.55 to 4123.62, inclusive, and 4123.64 to 4123.67, inclusive, of the Revised Code.

(3) Written notice of death has been given to the commission or bureau.

(B) As used in division (A)(2)(b) of this section "benefits" means payment by a self-insured employer to, or on behalf of, an employee for:

(1) A hospital bill;

(2) A medical bill to a licensed physician or hospital;

(3) An orthopedic or prosthetic device.

The commission shall provide printed notices quoting in full division (A) of this section, and every employer who is authorized to pay compensation direct to injured employees or dependents of killed employees shall be required to post and maintain at all times one or more of such notices in conspicuous places in the workshop or places of employment.

The commission has continuing jurisdiction as set forth in section 4123.52 of the Revised Code over a claim which meets the requirement of this section, including jurisdiction to award compensation or benefits for loss or impairment of bodily functions developing in a part or parts of the body not specified pursuant to division (A)(1) of this section, if the commission finds that the loss or impairment of bodily functions was due to and a result of or a residual of the injury to one of the parts of the body set forth in the written notice filed pursuant to division (A)(1) of this section.

Any claim pending before the administrator of the bureau of workmen's compensation, a board of review, the industrial commission, or a court on December 11, 1967, in which the remedy is affected by section 4123.84 of the Revised Code shall be governed by the terms of this section.

(Eff. 3-18-69.)

Supreme Court of the United States

OCTOBER TERM, 1975
No. 75-1360

DAN FRANCIS,
Appellant,

vs.

CHRYSLER CORPORATION,
KENNETH KROUSE, Administrator
Bureau of Workmen's Compensation,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF OHIO

MOTION TO DISMISS

WILLIAM J. BROWN
Attorney General of Ohio

ROBERT L. HOLDER
Assistant Attorney General
Workmen's Compensation
Section
State Office Tower –
17th Floor
30 East Broad Street
Columbus, Ohio 43215
Tel: (614) 466-8665

Counsel for Appellee,
Kenneth Krouse,
Administrator
Bureau of Workmen's
Compensation

Supreme Court of the United States

OCTOBER TERM, 1975
No. 75-1360

DAN FRANCIS,
Appellant,

vs.

CHRYSLER CORPORATION,
KENNETH KROUSE, Administrator
Bureau of Workmen's Compensation,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF OHIO

MOTION TO DISMISS

Appellee, Kenneth Krouse, pursuant to Rule 16 of the Rules of the Supreme Court, moves the final judgment of the Ohio Supreme Court be affirmed on the ground that this appeal presents no substantial federal question.

QUESTION PRESENTED

Whether the interpretation of Section 4123.84, Ohio Revised Code, made by the Supreme Court of Ohio, makes that statute violative of the Equal Protection Clause of the 14th Amendment of the Constitution of the United States.

This case involves the statutory requirements for tolling the statute of limitations for filing a workmen's compensation claim.

STATEMENT

This is a direct appeal from the decision of the Ohio Supreme Court, affirming decisions of the state Court of Appeals and trial court. The trial court decided this case on cross-motions for summary judgment, the only issue being a question of law involving the interpretation of Section 4123.84, Ohio Revised Code.

That statute states in pertinent part:

> "(A) In all cases of injury or death, claims for compensation or benefits for the specific part or parts of the body injured shall be forever barred unless, within two years after the injury or death:
>
> (1) Written notice of the specific part or parts of the body claimed to have been injured has been made to the industrial commission or the bureau of workmen's compensation;
>
> (2) In the event the employer has elected to pay compensation or benefits directly, one of the following has occurred:
>
> (a) Written notice of the specific part or parts of the body claimed to have been injured has been given to the commission or bureau;
>
> (b) Compensation or benefits have been paid or furnished equal to or greater than is provided for in sections 4123.52, 4123.55 to 4123.62, inclusive, and 4123.64 to 4123.67, inclusive, of the Revised Code.
>
> (3) Written notice of death has been given to the commission or bureau.

> (B) As used in division (A)(2)(b) of this section 'benefits' means payment by a self-insured employer to, or on behalf of, and employee for:
>
> (1) A hospital bill;
>
> (2) A medical bill to a licensed physician or hospital;
>
> (3) An orthopedic or prostetic device.
>
> The commission shall provide printed notices quoting in full division (A) of this section, and every employer who is authorized to pay compensation direct to injured employees or dependents of killed employees shall be required to post and maintain at all times one or more of such notices in conspicuous places in the workshop or places of employment."

In this case the parties have stipulated that the appellant received medical treatment from a licensed physician, who was a full time employee of appellee Chrysler Corporation.

The appellant herein maintains that when Chrysler pays a salary to this physician-employee, they are providing a "benefit" to the appellant within the meaning of the statute quoted above.

This appellee denies that the payment of a salary to a company physician, is the payment of "a medical bill" as contemplated by Section 4123.84(B)(2), Ohio Revised Code. Thus, it follows that the payment to this physician-employee of a salary does not operate to toll the statute of limitations contained in Section 4123.84, Ohio Revised Code. The parties agree that Chrysler is entitled to compensate its employee's directly pursuant to Section 4123.84(A)(2), Ohio Revised Code, and the parties additionally agree that the appellant did not otherwise toll the statute of limitations. The appellant did not file a written

claims application with the state until more than two years after the date of his alleged injury.

ARGUMENT

This appellee, Kenneth Krouse, Administrator of the Bureau of Workmen's Compensation is aware of the Motion to Dismiss filed herein by co-appellee Chrysler Corporation, and is, in complete agreement with that Motion to Dismiss. For that reason this appellee will abbreviate its arguments whenever possible in order to avoid repetition.

This appellee wishes to join with the Chrysler Corporation in emphasizing that the Fourteenth Amendment clothes the states with wide discretion in enacting laws which create different classifications, as long as those classifications are not "wholly irrelevant to the achievement of the state's objective". *McGowan vs. Maryland*, 366 U. S. p. 420, (1961).

The appellant's argument in his Jurisdiction Statement is not with the statute, per se, but with the interpretation of the statute made by the Ohio Supreme Court. It has long been held in these cases that the Supreme Court on appeal must accept the state court's construction of the statute and proceed to test the validity on that basis. *Guaranty Trust Co. vs. Blodgett*, 287 U. S. 509, p. 513, (1933); *Kingsley Pictures Corp vs. Regents*, 360 U. S. 684, p. 688, (1959).

The interpretation made by the Ohio Supreme Court, held that payment of a salary to a company physician was not payment of "a medical bill" within the meaning of Section 4123.84 (B)(2), Ohio Revised Code. This construction was reached only after a review of the legislative history of the statute. That history is fully contained in the Motion to Dismiss filed by co-appellee Chrysler Corporation and does not require restatement. Suffice it to say

that the appellant's construction of the statute is contrary to the plain language found therein, and is not supported by the legislative history.

Accepting the interpretation of the statute made by the Ohio Supreme Court, the question presented is whether that view of the statute violates the equal protection of the laws guaranteed by the 14th Amendment to the Constitution of the United States. This appellee contends that it does not.

The statute does create classifications for employees who work for employers who pay compensation and benefits directly, and those who work for employers who do not pay directly. The appellant worked for Chrysler Corporation, who did pay directly. Under the statute, it is *easier* for the appellant to toll the statute of limitations than it is for an employee of an employer who did not pay directly. Obviously, the appellant does not complain of this classification.

The statute in question, Section 4123.84, Ohio Revised Code, also creates a classification of employees who can toll the statute when their employer pays "a medical bill". Appellant argues that since he received medical treatment from a company physician who was salaried, his employer had no bill to pay, and therefore he was unable to toll the statute of limitations as was the employee who received care from a private physician. Appellant complains that he must notify his employer of an alleged injury by filing a claim.

While it is true that the two classes give notice of a claim to their employer in different ways, neither is favored. The Ohio Workmen's Compensation Law permits any employee, regardless of whether his employer pays compensation and benefits directly, to seek initial treatment from any physician of his choice. Appellant does not

allege that employees within the class who receive treatment from a private physician or within the class treated by a company doctor are treated differently. The appellant's argument is that the mere creation of these two classes is wholly arbitrary, and operates to deny him equal protection of the law.

This appellee, Kenneth Krouse, strenuously disagrees. First, all employees of any self-insuring employer may file a written claims application with the "commission or bureau". This quoted language refers to the Industrial Commission of Ohio or the Bureau of Workmen's Compensation, both of which are state agencies which administer the workmen's compensation system in Ohio. Secondly, an employee of any self-insuring employer may initially go to a private physician of their own choice. If their employer pays for a medical bill submitted from that private physician or reimburses the employee for such a bill, the employee has tolled the statute of limitations.

The reason for this is obvious. Normally, the employer would be under no obligation to pay for such services unless the services were the result of an industrial accident. When such a bill is submitted for payment the employer is put on notice that the employee is alleging an industrial injury. The employer would only accept and pay for those bills which it admitted were valid. If the self-insured employer refused to pay the bill of a private physician, *the statute would not be tolled.* It would still be up to the employee to file a claim within two years of the alleged date of injury. Of course, if the employee never submitted the bill of the private physician to his employer for payment, the statute would not be tolled.

Therefore, the mere treatment by a physician, whether private or company physician, provides no notice of the existence of an industrial injury. Even if the employee is treated by a private physician, the employee must still

notify his employer of an alleged injury by presenting and justifying that bill to his employer for payment.

Similarly, mere treatment by a company physician at a company dispensary does not place the employer on notice that an industrial injury is alleged. The company physician is there to treat employee maladies whether or not they are job related.

The employee who receives treatment from a company physician is in no better or worse position than the employee who receives care from a private physician. Both must take steps to notify their employer of the occurrence of an industrial injury in order to toll the statute of limitations. One files a claim, the other files a bill.

Although there may be a procedural difference in how the two classes toll the statute, this difference is wholly justified since it is based upon the rationale of providing proper notification to the employer.

The statute in question is a statute of limitation. Generally, the purpose of such a statute is to provide the employer or state agency with notice of an injury so that prompt medical attention can be secured and so that the circumstances of the accident can be investigated. Volume 3, *Workmen's Compensation Law,* Arthur Larson, paragraph 78.30.

This appellee believes that the Ohio Legislature did not act arbitrarily in requiring that an employee meet the reasonable requirements of notice contained in the statute. These requirements do not discriminate between classifications since both require the employee to provide his employer with adequate notice of an alleged injury. Whatever procedural differences do exist are wholly justified by this legitimate state interest of providing such notice. There can be no substantial federal question presented under these circumstances.

For these reasons, and for the additional reasons set forth in co-appellee's Chrysler Corporations Motion to Dismiss, this appellee, Kenneth Krouse, respectfully submits that this Court should grant this Motion to Dismiss Appellant's Appeal.

Respectfully submitted,

WILLIAM J. BROWN
Attorney General of Ohio

ROBERT L. HOLDER
Assistant Attorney General
Workmen's Compensation
Section

COUNSEL FOR:

Appellee Kenneth Krouse,
Administrator of Bureau of
Workmen's Compensation

Supreme Court of the United States

October Term, 1975
No. 75-1360

DAN FRANCIS,
Appellant,

vs.

CHRYSLER CORPORATION, KENNETH KROUSE,
Administrator, Bureau of Workmen's Compensation,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF OHIO

MOTION TO DISMISS APPEAL

EDWARD C. KAMINSKI
WALTER E. DEBRUIN
BUCKINGHAM, DOOLITTLE & BURROUGHS
1500—I Cascade Plaza
Akron, Ohio 44308
(216) 376-5300
Attorneys for Appellee, Chrysler Corporation

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

Supreme Court of the United States

October Term, 1975
No. 75-1360

DAN FRANCIS,
Appellant,

vs.

CHRYSLER CORPORATION, KENNETH KROUSE,
Administrator, Bureau of Workmen's Compensation,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF OHIO

MOTION TO DISMISS APPEAL

Chrysler Corporation, Appellee herein, by its counsel, moves the Court to dismiss the appeal herein on the following ground: NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED BY THE APPEAL.

QUESTION PRESENTED

The Appellant in this case claims that §4123.84 O. Rev. Code, the Statute of Limitation provision under the Ohio Workmen's Compensation Law, is violative of an employee's rights guaranteed under the Equal Protection Clause of the 14th Amendment of the Constitution of the United States.

It is the position of Chrysler Corporation, Appellee, that when the facts of this case are measured against the past decisions of this Court, it is clear that there is no substantial federal question presented by this appeal and that Appellee's motion to dismiss should be sustained.

THERE IS NO SUBSTANTIAL FEDERAL QUESTION PRESENTED BY THIS APPEAL

A. The restricted scope of this Court's review of State regulatory legislation under the Equal Protection Clause is of long standing.

In the case of *McGowan v. Maryland*, 366 U.S. p. 420, Chief Justice Warren, in writing the opinion of the Court, said as follows:

> Although no precise formula has been developed, the Court has held that the 14th Amendment permits the states a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offered only if the classification rests on grounds wholly irrelevant to the achievement of the state's objective. The state legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.

Justice Frankfurter in a concurring opinion said:

> The restricted scope of this Court's review of state regulatory legislation under the Equal Protection clause is of long standing. The applicable principles are that a state statute may not be struck down as offensive of equal protection in its schemes of classification unless it is obviously arbitrary, and that, except in the case of a statute whose discriminations are so patently without reason that no conceivable situation of fact could be found to justify them, the claimant who challenged the statute bears the burden

> of affirmative demonstration that in the actual state of facts which surround its operation, its classification lacks rationality.

See also the opinion of Justice Black in the case of *Ferguson v. Skrupa*, 372 U.S. 726. See also the opinion of Justice Stewart in the case of *Dandridge v. Williams*, 397 U.S. 471:

B. §4123.84 O. Rev. Code does not provide an arbitrary and unreasonable classification of employees in violation of the Equal Protection Clause.

In his jurisdictional statement, counsel for the Appellant outlines the development of the Ohio Workmen's Compensation Law, particularly with reference to §4123.84, Ohio Rev. Code, but he has omitted some cardinal facts which may tend to distort the problem which was before the courts of Ohio.

For example, on pages 7 and 8 of said statement, Appellant correctly states that from 1919 until 1941, the Ohio law required only that an employee need make *oral* application for compensation either to the State Fund or to the self-insuring employer. Then in 1941, the legislature realized through experience that it was necessary to require that such applications be in writing to the Industrial Commission. At the same time, they provided that, in the case of self-insuring employers, any payments of workmen's compensation by said employer would serve as an alternative means of notice. It must be borne in mind that this section was the Statute of Limitations on workmen's compensation claims. Arthur Larson, in Vol. 3 of his work on Workmen's Compensation, para. 78.30, describes the twofold purpose of timely notice under workmen's compensation laws as follows:

The first is to facilitate prompt medical attention for the injury; the second is to provide the employer or the Commission with an opportunity for immediate investigation of the circumstances of the accident.

Counsel for the Appellant, on page 8 of his jurisdictional statement, accurately describes the action of the Ohio Legislature in amending §4123.84 to its present form, but he neglected to mention the preceding history of this section which led up to its adoption. We shall try to sketch that briefly here.

Up until 1959, under the above code provision, the only compensation payments made by an employer which would toll the two-year statute of limitation were the regular weekly payments, which did not include any payment for medical service. Then in 1959, the Ohio Legislature made a change in the workmen's compensation law by providing in addition that any benefits such as the furnishing of medicine, services or therapeutic devices, proprietary or otherwise, would also toll the Statute of Limitations.

But since most self-insuring employers maintained medical facilities which were available to employees regardless of whether the need was industrial or not, they were afraid that any kind of emergency or first-aid medical treatment to employees might be deemed to have tolled the Statute of Limitations notwithstanding the fact that the employee did not claim at that time that the condition for which he was treated was the result of any injury. This unwarranted extension of the provisions of the Workmen's Compensation Act was called to the attention of the Legislature and remedial action was taken to correct this anomaly. On October 1, 1963, the Legislature amended §4123.84 to read as it does today.

The decision of the Court of Appeals of Summit County, Ohio appears on page 18 of Appellant's brief, and at page 23, is quoted as follows:

> However, we fail to see how Revised Code 4123.84 (B)(2) invidiously discriminates against the worker in the factory of a self-insurer. He can toll the Statute by filing a written claim with the Industrial Commission whether employed by a self-insurer or a regular contributor to the fund. As an employee of a self-insurer, the plaintiff (Appellant) has the same options as his fellow employees of filing a written notice or submitting a bill of a licensed physician for payment. If he elects to receive treatment in some form other than by a hospital, or a licensed physician, he can still file a written notice. The classifications urged by plaintiff are really artificial subclasses. In reality, it actually takes less for an employee of a self-insurer to toll the Statute than it does for an employee of a non-self-insurer. . . the giving of notice to the self-insurer was reasonable grounds for the legislative classifications of specified, but limited, benefits necessary to toll the Statute. We cannot therefore inquire into the wisdom of such legislation.

The Court will also note the opinion of the Supreme Court of Ohio which appears beginning at page 14 of Appellant's jurisdictional statement. It will be noted that the Supreme Court quoted at length from the opinion of the Court of Appeals and affirmed the judgment of that Court.

We believe it to be abundantly clear from the above history that the Ohio Legislature did not act "arbitrarily" and that "The discrimination was not so patently without reason that no conceivable situation of fact could be found to justify it." Quite to the contrary (and all the courts

of Ohio have so found), the action of the Legislature in passing such legislation was based upon years of experience and the need for some reasonable requirement of notice. There can be no substantial federal constitutional question under such circumstances.

Justice Rehnquist, in his dissenting opinion in the case of *Webber v. Aetna Casualty and Insurance Company*, 406 U.S. 164, voiced a fear of this Court's involvement in such cases when he said,

> All legislation involves classification and line drawing of one kind or another. When this court expands the traditional 'reasonable basis' standard for judgment under the Equal Protection clause into a search for 'legitimate' state interests that the legislation may 'promote' and 'for fundamental personal rights' that it might 'endanger,' it is doing nothing less than passing policy judgments upon the acts of every state legislature in the country.

We respectfully submit that the Court should grant this Motion to Dismiss Appellant's Appeal.

EDWARD C. KAMINSKI
WALTER E. DEBRUIN
BUCKINGHAM, DOOLITTLE & BURROUGHS
1500—I Cascade Plaza
Akron, Ohio 44308
(216) 376-5300
Attorneys for Appellee, Chrysler Corporation